

SENATE
STATE OF MINNESOTA
NINETY-FIRST SESSION

S.F. No. 2322

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DATE	D-PG	OFFICIAL STATUS
03/11/2019	776	Introduction and first reading Referred to Family Care and Aging
03/13/2019	869	Author added Rosen
03/14/2019	950a	Comm report: To pass as amended and re-refer to Human Services Reform Finance and Policy

- 1.1 A bill for an act
- 1.2 relating to child care; reforming child care provider licensing inspections;
- 1.3 establishing an abbreviated inspection process for qualifying child care providers;
- 1.4 establishing risk-based violation levels and corresponding enforcement actions;
- 1.5 directing the commissioner of human services to assign rules and statutory
- 1.6 provisions to violation risk levels; directing the commissioner of human services
- 1.7 to develop key indicators that predict full compliance for use in abbreviated
- 1.8 inspections; appropriating money; amending Minnesota Statutes 2018, sections
- 1.9 245A.04, subdivision 4, by adding a subdivision; 245A.06, subdivision 1;
- 1.10 245A.065; 245A.16, subdivision 1; proposing coding for new law in Minnesota
- 1.11 Statutes, chapter 245A.
- 1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:
- 1.13 Section 1. Minnesota Statutes 2018, section 245A.04, subdivision 4, is amended to read:
- 1.14 Subd. 4. **Inspections; waiver.** (a) Before issuing an initial license, the commissioner
- 1.15 shall conduct an inspection of the program. The inspection must include but is not limited
- 1.16 to:
- 1.17 (1) an inspection of the physical plant;
- 1.18 (2) an inspection of records and documents;
- 1.19 (3) an evaluation of the program by consumers of the program;
- 1.20 (4) observation of the program in operation; and
- 1.21 (5) an inspection for the health, safety, and fire standards in licensing requirements for
- 1.22 a child care license holder.

2.1 For the purposes of this subdivision, "consumer" means a person who receives the
2.2 services of a licensed program, the person's legal guardian, or the parent or individual having
2.3 legal custody of a child who receives the services of a licensed program.

2.4 (b) The evaluation required in paragraph (a), clause (3), or the observation in paragraph
2.5 (a), clause (4), is not required prior to issuing an initial license under subdivision 7. If the
2.6 commissioner issues an initial license under subdivision 7, these requirements must be
2.7 completed within one year after the issuance of an initial license.

2.8 (c) Before completing a licensing inspection in a family child care program or child care
2.9 center, the licensing agency must offer the license holder an exit interview to discuss
2.10 violations of law or rule observed during the inspection and offer technical assistance on
2.11 how to comply with applicable laws and rules. Nothing in this paragraph limits the ability
2.12 of the commissioner to issue a correction order or negative action for violations of law or
2.13 rule not discussed in an exit interview or in the event that a license holder chooses not to
2.14 participate in an exit interview.

2.15 (d) The commissioner or the county shall inspect at least annually a child care provider
2.16 licensed under this chapter and Minnesota Rules, chapter 9502 or 9503, for compliance
2.17 with applicable licensing standards. Inspections of family child care providers shall be
2.18 conducted in accordance with section 245A.055.

2.19 (e) No later than November 19, 2017, the commissioner shall make publicly available
2.20 on the department's website the results of inspection reports of all child care providers
2.21 licensed under this chapter and under Minnesota Rules, chapter 9502 or 9503, and the
2.22 number of deaths, serious injuries, and instances of substantiated child maltreatment that
2.23 occurred in licensed child care settings each year.

2.24 **EFFECTIVE DATE.** This section is effective July 1, 2020.

2.25 Sec. 2. Minnesota Statutes 2018, section 245A.04, is amended by adding a subdivision to
2.26 read:

2.27 **Subd. 18. Plain-language handbook.** By January 1, 2020, the commissioner of human
2.28 services shall, following consultation with family child care license holders, parents, and
2.29 county agencies, develop a plain-language handbook that describes the process and
2.30 requirements to become a licensed family child care provider. The handbook shall include
2.31 a list of the applicable statutory provisions and rules that apply to licensed family child care
2.32 providers. The commissioner shall electronically publish the handbook on the Department
2.33 of Human Services website, available at no charge to the public. Each county human services

3.1 office and the Department of Human Services shall maintain physical copies of the handbook
3.2 for public use.

3.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.4 Sec. 3. **[245A.055] FAMILY CHILD CARE PROVIDER INSPECTIONS.**

3.5 Subdivision 1. **Inspections.** The commissioner shall conduct inspections of each family
3.6 child care provider pursuant to section 245A.04, subdivision 4, paragraph (d).

3.7 Subd. 2. **Types of child care licensing inspections.** (a) "Initial inspection" means an
3.8 inspection before issuing an initial license under section 245A.04, subdivision 4, paragraph
3.9 (a).

3.10 (b) "Full inspection" means the inspection of a family child care provider to determine
3.11 ongoing compliance with all applicable legal requirements for family child care providers.
3.12 A full inspection shall be conducted for temporary provisional licensees and for providers
3.13 who do not meet the requirements needed for an abbreviated inspection.

3.14 (c) "Abbreviated inspection" means the inspection of a family child care provider to
3.15 determine ongoing compliance with key indicators that statistically predict compliance with
3.16 all applicable legal requirements for family child care providers. Abbreviated inspections
3.17 are available for family child care providers who have been licensed for at least three years
3.18 with the latest inspection finding no Level 4 violations. Providers must also not have had
3.19 any substantiated licensing complaints that amount to a Level 4 violation, substantiated
3.20 complaints of maltreatment, or sanctions under section 245A.07 in the past three years. If
3.21 a county licensor finds that the provider has failed to comply with any key indicator during
3.22 an abbreviated inspection, the county licensor shall immediately conduct a full inspection.

3.23 (d) "Follow-up inspection" means a full inspection conducted following an inspection
3.24 that found more than one Level 4 violation.

3.25 Subd. 3. **Enforcement actions.** (a) Except where required by federal law, enforcement
3.26 actions under this subdivision may be taken based on the risk level of the violation as follows:

3.27 (1) Level 1: a violation that presents no risk of harm or minimal risk of harm, warranting
3.28 verbal technical assistance under section 245A.066, subdivision 1;

3.29 (2) Level 2: a violation that presents a low risk of harm, warranting issuance of a technical
3.30 assistance notice under section 245A.065, subdivision 2;

3.31 (3) Level 3: a violation that presents a moderate risk of harm, warranting issuance of a
3.32 fix-it ticket under section 245A.065; and

4.1 (4) Level 4: a violation that presents a substantial risk of harm, warranting issuance of
4.2 a correction order or conditional license under section 245A.06.

4.3 (b) The commissioner shall, following consultation with family child care license holders,
4.4 parents, and county agencies, issue a report by January 1, 2020, that identifies the violations
4.5 of this chapter and Minnesota Rules, chapter 9502, that constitute Level 1, Level 2, Level
4.6 3, or Level 4 violations based on the schedule in paragraph (a). The commissioner shall
4.7 also identify the rules and statutes that may be violated at more than one risk level, such
4.8 that the county licensor may assign the violation a risk level according to the licensor's
4.9 discretion during an inspection. The report shall also identify all rules and statutory provisions
4.10 that must be enforced in accordance with federal law. The commissioner shall provide the
4.11 report to county agencies and the chairs and ranking minority members of the legislative
4.12 committees with jurisdiction over child care, and shall post the report to the department's
4.13 website. By July 1, 2020, the commissioner shall develop, distribute, and provide training
4.14 on guidelines on the use of the risk-based violation levels in paragraph (a) during family
4.15 child care provider inspections.

4.16 Subd. 4. **Follow-up inspections.** If, upon inspection, the commissioner finds more than
4.17 one Level 4 violation, the commissioner shall conduct a follow-up inspection within six
4.18 months. The date of the follow-up inspection does not alter the provider's annual inspection
4.19 date.

4.20 **EFFECTIVE DATE.** This section is effective July 1, 2020, with the exception that
4.21 subdivision 3, paragraph (b), is effective the day following final enactment.

4.22 Sec. 4. Minnesota Statutes 2018, section 245A.06, subdivision 1, is amended to read:

4.23 Subdivision 1. **Contents of correction orders and conditional licenses.** (a) Except as
4.24 provided in paragraph (c), if the commissioner finds that the applicant or license holder has
4.25 failed to comply with an applicable law or rule and this failure does not imminently endanger
4.26 the health, safety, or rights of the persons served by the program, the commissioner may
4.27 issue a correction order and an order of conditional license to the applicant or license holder.
4.28 When issuing a conditional license, the commissioner shall consider the nature, chronicity,
4.29 or severity of the violation of law or rule and the effect of the violation on the health, safety,
4.30 or rights of persons served by the program. The correction order or conditional license must
4.31 state the following in plain language:

4.32 (1) the conditions that constitute a violation of the law or rule;

4.33 (2) the specific law or rule violated;

5.1 (3) the time allowed to correct each violation; and

5.2 (4) if a license is made conditional, the length and terms of the conditional license, and
5.3 the reasons for making the license conditional.

5.4 (b) Nothing in this section prohibits the commissioner from proposing a sanction as
5.5 specified in section 245A.07, prior to issuing a correction order or conditional license.

5.6 (c) For family child care license holders, the commissioner may issue a correction order
5.7 or conditional license as provided in this section if, upon inspection, the commissioner finds
5.8 a Level 4 violation as provided in section 245A.055, subdivision 3, or if a child care provider
5.9 fails to correct a Level 3 violation as required under section 245A.065, paragraph (e).

5.10 **EFFECTIVE DATE.** This section is effective July 1, 2020.

5.11 Sec. 5. Minnesota Statutes 2018, section 245A.065, is amended to read:

5.12 **245A.065 CHILD CARE FIX-IT TICKET.**

5.13 (a) ~~In lieu of a correction order under section 245A.06,~~ The commissioner ~~shall~~ may
5.14 issue a fix-it ticket to a ~~family child care or~~ child care center license holder if, upon
5.15 inspection, the commissioner finds that:

5.16 (1) the license holder has failed to comply with a requirement in this chapter or Minnesota
5.17 Rules, chapter 9502 or 9503, that the commissioner determines to be eligible for a fix-it
5.18 ticket;

5.19 (2) the violation does not imminently endanger the health, safety, or rights of the persons
5.20 served by the program;

5.21 (3) the license holder did not receive a fix-it ticket or correction order for the violation
5.22 at the license holder's last licensing inspection;

5.23 (4) the violation can be corrected at the time of inspection or within 48 hours, excluding
5.24 Saturdays, Sundays, and holidays; and

5.25 (5) the license holder corrects the violation at the time of inspection or agrees to correct
5.26 the violation within 48 hours, excluding Saturdays, Sundays, and holidays.

5.27 (b) The commissioner may issue a fix-it ticket to a family child care license holder if,
5.28 upon inspection, the commissioner finds a Level 3 violation as provided in section 245A.055,
5.29 subdivision 3.

5.30 (c) The fix-it ticket must state:

5.31 (1) the conditions that constitute a violation of the law or rule;

6.1 (2) the specific law or rule violated; and

6.2 (3) that the violation was corrected at the time of inspection or must be corrected within
6.3 48 hours, excluding Saturdays, Sundays, and holidays.

6.4 ~~(e)~~ (d) The commissioner shall not publicly publish a fix-it ticket on the department's
6.5 website, unless required by federal law.

6.6 ~~(d)~~ (e) Within 48 hours, excluding Saturdays, Sundays, and holidays, of receiving a fix-it
6.7 ticket, the license holder must correct the violation and within one week submit evidence
6.8 to the licensing agency that the violation was corrected.

6.9 ~~(e)~~ (f) If the violation is not corrected at the time of inspection or within 48 hours,
6.10 excluding Saturdays, Sundays, and holidays, or the evidence submitted is insufficient to
6.11 establish that the license holder corrected the violation, the commissioner ~~must~~ may issue
6.12 a correction order for the violation of Minnesota law or rule identified in the fix-it ticket
6.13 according to section 245A.06.

6.14 ~~(f) The commissioner shall, following consultation with family child care license holders,
6.15 child care center license holders, and county agencies, issue a report by October 1, 2017,
6.16 that identifies the violations of this chapter and Minnesota Rules, chapters 9502 and 9503,
6.17 that are eligible for a fix-it ticket. The commissioner shall provide the report to county
6.18 agencies and the chairs and ranking minority members of the legislative committees with
6.19 jurisdiction over child care, and shall post the report to the department's website.~~

6.20 **EFFECTIVE DATE.** This section is effective July 1, 2020.

6.21 Sec. 6. **[245A.066] CHILD CARE TECHNICAL ASSISTANCE.**

6.22 **Subdivision 1. Verbal technical assistance.** The commissioner may provide verbal
6.23 technical assistance to a family child care or child care center license holder if, upon
6.24 inspection, the commissioner finds a Level 1 violation as provided in section 245A.055,
6.25 subdivision 3.

6.26 **Subd. 2. Technical assistance notice.** (a) The commissioner may issue a written technical
6.27 assistance notice to a family child care license holder if, upon inspection, the commissioner
6.28 finds a Level 2 violation as provided in section 245A.055, subdivision 3.

6.29 (b) The technical assistance notice must state:

6.30 (1) the conditions that constitute a violation of the law or rule;

6.31 (2) the specific law or rule violated; and

7.1 (3) examples of how to correct the violation.

7.2 (c) The commissioner shall not publicly publish a written technical assistance notice on
7.3 the department's website, unless required by federal law.

7.4 **EFFECTIVE DATE.** This section is effective July 1, 2020.

7.5 Sec. 7. Minnesota Statutes 2018, section 245A.16, subdivision 1, is amended to read:

7.6 Subdivision 1. **Delegation of authority to agencies.** (a) County agencies and private
7.7 agencies that have been designated or licensed by the commissioner to perform licensing
7.8 functions and activities under section 245A.04 and background studies for family child care
7.9 under chapter 245C; to recommend denial of applicants under section 245A.05; to issue
7.10 correction orders, to issue variances, and recommend a conditional license under section
7.11 245A.06; or to recommend suspending or revoking a license or issuing a fine under section
7.12 245A.07, shall comply with rules and directives of the commissioner governing those
7.13 functions and with this section. The following variances are excluded from the delegation
7.14 of variance authority and may be issued only by the commissioner:

7.15 (1) dual licensure of family child care and child foster care, dual licensure of child and
7.16 adult foster care, and adult foster care and family child care;

7.17 (2) adult foster care maximum capacity;

7.18 (3) adult foster care minimum age requirement;

7.19 (4) child foster care maximum age requirement;

7.20 (5) variances regarding disqualified individuals except that, before the implementation
7.21 of NETStudy 2.0, county agencies may issue variances under section 245C.30 regarding
7.22 disqualified individuals when the county is responsible for conducting a consolidated
7.23 reconsideration according to sections 245C.25 and 245C.27, subdivision 2, clauses (a) and
7.24 (b), of a county maltreatment determination and a disqualification based on serious or
7.25 recurring maltreatment;

7.26 (6) the required presence of a caregiver in the adult foster care residence during normal
7.27 sleeping hours; and

7.28 (7) variances to requirements relating to chemical use problems of a license holder or a
7.29 household member of a license holder.

7.30 Except as provided in section 245A.14, subdivision 4, paragraph (e), a county agency must
7.31 not grant a license holder a variance to exceed the maximum allowable family child care
7.32 license capacity of 14 children.

8.1 (b) Before the implementation of NETStudy 2.0, county agencies must report information
 8.2 about disqualification reconsiderations under sections 245C.25 and 245C.27, subdivision
 8.3 2, paragraphs (a) and (b), and variances granted under paragraph (a), clause (5), to the
 8.4 commissioner at least monthly in a format prescribed by the commissioner.

8.5 (c) For family child care programs, the commissioner shall require a county agency to
 8.6 conduct one unannounced licensing ~~review~~ inspection at least annually.

8.7 (d) For family adult day services programs, the commissioner may authorize licensing
 8.8 reviews every two years after a licensee has had at least one annual review.

8.9 (e) A license issued under this section may be issued for up to two years.

8.10 (f) During implementation of chapter 245D, the commissioner shall consider:

8.11 (1) the role of counties in quality assurance;

8.12 (2) the duties of county licensing staff; and

8.13 (3) the possible use of joint powers agreements, according to section 471.59, with counties
 8.14 through which some licensing duties under chapter 245D may be delegated by the
 8.15 commissioner to the counties.

8.16 Any consideration related to this paragraph must meet all of the requirements of the corrective
 8.17 action plan ordered by the federal Centers for Medicare and Medicaid Services.

8.18 (g) Licensing authority specific to section 245D.06, subdivisions 5, 6, 7, and 8, or
 8.19 successor provisions; and section 245D.061 or successor provisions, for family child foster
 8.20 care programs providing out-of-home respite, as identified in section 245D.03, subdivision
 8.21 1, paragraph (b), clause (1), is excluded from the delegation of authority to county and
 8.22 private agencies.

8.23 (h) A county agency shall report to the commissioner, in a manner prescribed by the
 8.24 commissioner, the following information for a licensed family child care program:

8.25 (1) the results of each licensing ~~review~~ inspection completed, including the date of the
 8.26 ~~review~~ inspection, and any ~~licensing~~ correction order issued; and

8.27 (2) any death, serious injury, or determination of substantiated maltreatment.

8.28 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.1 Sec. 8. **DIRECTION TO COMMISSIONER; ABBREVIATED INSPECTION**

9.2 **MODEL.**

9.3 (a) By January 1, 2020, the commissioner of human services shall, following consultation
 9.4 with family child care license holders, parents, and county agencies, develop the key
 9.5 indicators for use in the abbreviated inspection process under Minnesota Statutes, section
 9.6 245A.055, subdivision 2, paragraph (c), and report the results to the chairs and ranking
 9.7 minority members of the legislative committees with jurisdiction over child care. In
 9.8 developing the key indicators that predict full compliance with the statutes and rules
 9.9 governing licensed child care providers, the commissioner shall utilize an empirically based
 9.10 statistical methodology similar to the licensing key indicator systems as developed by the
 9.11 National Association for Regulatory Administration and the Research Institute for Key
 9.12 Indicators.

9.13 (b) By July 1, 2020, the commissioner of human services shall develop, distribute, and
 9.14 provide training to implement abbreviated inspections as described in Minnesota Statutes,
 9.15 section 245A.055, subdivision 2, paragraph (c).

9.16 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.17 Sec. 9. **DIRECTION TO COMMISSIONER; CORRECTION ORDER**

9.18 **ENFORCEMENT REVIEW.**

9.19 By January 1, 2020, the commissioner of human services shall develop and implement
 9.20 a process to review licensing inspection results provided under Minnesota Statutes, section
 9.21 245A.16, subdivision 1, paragraph (h), clause (1), by county to identify trends in correction
 9.22 order enforcement. The commissioner shall develop guidance and training as needed to
 9.23 address any imbalance or inaccuracy in correction order enforcement. The commissioner
 9.24 shall include the results in the annual report on child care under Minnesota Statutes, section
 9.25 245A.153, provided that the results are limited to summary data as defined in Minnesota
 9.26 Statutes, section 13.02, subdivision 19.

9.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.28 Sec. 10. **APPROPRIATION.**

9.29 \$..... in fiscal year 2020 is appropriated from the general fund to the commissioner of
 9.30 human services to develop, distribute, and provide training on child care provider inspections
 9.31 based on the risk-based violation levels under Minnesota Statutes, section 245A.055,
 9.32 subdivision 3, including use of an abbreviated inspection that is based on key indicators

- 10.1 that predict full compliance with the statutes and rules governing licensed child care providers
- 10.2 under Minnesota Statutes, section 245A.055, subdivision 2, for qualifying child care
- 10.3 providers. This is a onetime appropriation.